

THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) 3:17-CR-00169-B  
 )  
SAID AZZAM MOHAMAD RAHIM, )  
 )  
Defendant. )

TRANSCRIPT OF PROCEEDINGS  
SENTENCING HEARING  
BEFORE THE HONORABLE JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE  
DECEMBER 11, 2019

A P P E A R A N C E S

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proceedings reported by mechanical stenography,  
transcript produced by computer.

SHAWNIE ARCHULETA, CSR/CRR  
FEDERAL COURT REPORTER - 214.753.2747

1 (In open court at 1:35 p.m.)

2 THE COURT: Now we're going to do Rahim,  
3 3:17-CR-169.

4 Who is here for the defense?

5 MR. WHALEN: James Whalen for Mr. Rahim,  
6 Your Honor.

7 THE COURT: For the government.

8 MS. MARTIN: Errin Martin and Brian  
9 Portugal from the government and Agent Dwayne  
10 Golomb.

11 THE COURT: What is the name?

12 MALE SPEAKER: Golomb, G-O-L-O-M-B.

13 THE COURT: You are the agent. Yes, I  
14 remember.

15 (Defendant enters the courtroom.)

16 THE COURT: Okay. Mr. Rahim.

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Good afternoon.

19 THE DEFENDANT: Good afternoon, how are  
20 you?

21 THE COURT: You know you are here -- thank  
22 you very much. I'm fine. Hope you are good, too.

23 We are here for your sentencing in your  
24 case today.

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And I want to ask you several  
2 questions. And I'm sure we're going to be covering  
3 a lot of things, so I would like to place you under  
4 oath before we do anything else.

5 So raise your right hand, please.

6 (The Defendant was sworn.)

7 THE DEFENDANT: I do.

8 THE COURT: Okay. Have you read  
9 thoroughly through the presentence report paragraph  
10 by paragraph, word by word with Mr. Whalen before  
11 today?

12 THE DEFENDANT: Yes, I did.

13 THE COURT: Okay. Do you have any  
14 questions about it?

15 THE DEFENDANT: No, I don't.

16 THE COURT: Okay. The government filed a  
17 statement regarding -- excuse me -- regarding the  
18 presentence report, accepting the PSR. Are you  
19 familiar with that? That's Document 145.

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Document 146 -- whoops.  
22 Document 144 are your objections to the PSR, and  
23 they are filed by Mr. Whalen on your behalf.

24 Have you read through those with him?

25 THE DEFENDANT: Yes, I have.

1 THE COURT: Do you have any questions  
2 about them?

3 THE DEFENDANT: No, I don't.

4 THE COURT: Okay. Then the government  
5 responded to your statement about the objections in  
6 Document 146. And have you read through that with  
7 Mr. Whalen?

8 THE DEFENDANT: Yes, I did.

9 THE COURT: Any questions about it?

10 THE DEFENDANT: No, I don't.

11 THE COURT: Okay. Then I have an  
12 addendum, which was filed by probation, which  
13 responded to the objections and decided what to do  
14 about them.

15 Have you read through that with  
16 Mr. Whalen?

17 THE DEFENDANT: Yes, I did.

18 THE COURT: Okay. Have you read through  
19 the addendum?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Do you have any questions  
22 about the addendum?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Okay. Hold on a second.

25 (Pause in the proceedings.)

1 THE COURT: Then I have Rahim's sentencing  
2 memorandum. It's very lengthy, and it has all sorts  
3 of letters that I have read through, and it's  
4 Document 148.

5 Have you read through that with  
6 Mr. Whalen?

7 THE DEFENDANT: Yes, I did.

8 THE COURT: Do you have any questions  
9 about it?

10 THE DEFENDANT: No, I don't Your Honor.

11 THE COURT: Then I have a supplemental  
12 response to the defendant's objections to the PSR  
13 that mentions the new case by the government,  
14 Document 151.

15 Have you read through that?

16 THE DEFENDANT: Yes, I did.

17 THE COURT: That is all I have. Lots of  
18 letters from you, including a letter from the jail  
19 counselor at Seagoville -- I think it was  
20 Seagoville.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: I have read through all of  
23 those.

24 Now, is there anything else that you have  
25 to say, because I want to go through the objections.

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Anything from the government  
3 before we start?

4 MS. MARTIN: Nothing, Your Honor.

5 THE COURT: Okay. Mr. Whalen, let's go  
6 ahead with your objections.

7 MR. WHALEN: Yes, Your Honor.

8 First of all, just out of an abundance of  
9 caution -- always concerned about the 5th Circuit --  
10 is we filed in our objections that we continue to  
11 renew our Rule 29 Motion so as not to waive that.

12 THE COURT: Yes. And your motion is  
13 denied. Thank you.

14 MR. WHALEN: So the next objection relates  
15 to the 12-level enhancement that was set forth in  
16 paragraphs 45, 46 and 58. The objection as stated  
17 in a written objection talks about whether or not it  
18 is a federal crime of terrorism, and there's two  
19 prongs to be met. And one is whether or not it  
20 influences or affects the conduct of the government  
21 by intimidation, coercion, or retaliation against  
22 government conduct.

23 And so we believe that there's -- first of  
24 all, there's no specific intent through the evidence  
25 that was presented at trial to support that. And so

1 for those reasons, we believe that the 12-level  
2 enhancement should not be imposed.

3 And secondly, the cases that I found  
4 indicate that there would be this specific intent  
5 requirement in order to find that prong that we  
6 discussed. And so looking at the jury charge that  
7 was filed, the only mental state in the written jury  
8 charge was about knowingly. There was not any  
9 reference to any type of specific intent.

10 THE COURT: Did you ask for it?

11 MR. WHALEN: I didn't, because it wasn't  
12 an element of the crimes charged. The mental state  
13 for the multiple material support counts was  
14 knowingly. And so in the false statements, it was  
15 knowingly and willfully. So as far as it related to  
16 the terrorism counts, it was simply knowingly. So  
17 that was the only definition they received.

18 And so therefore, because this is  
19 indicating it requires a specific intent  
20 requirement, it is our view that -- while I know  
21 it's not -- like it's not fits neatly into a  
22 statutory minimum or a statutory mandatory minimum  
23 or anything like that, because the statute is zero  
24 to 20.

25 THE COURT: Okay, Mr. Whalen. Why don't

1 you sit down, Mr. Rahim, over there, because we have  
2 quite a few of objections to go through. All right?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Go ahead.

5 MR. WHALEN: That it is -- so therefore,  
6 since that element -- the enhancement requires the  
7 Court, the way I read the case law, to make this  
8 finding of specific intent. So for the Court to be  
9 allowed to make that finding of a mental state, that  
10 becomes an extrajudicial fact-finding on the Court's  
11 part, and therefore that violates his 6th Amendment  
12 right to a jury trial. This should have -- could  
13 have been, in my mind, like a special issue as far  
14 as it goes to whether or not it's a drug quantity  
15 amount. And so therefore, because, in effect, this  
16 enhancement is now enhancing his sentence.

17 And when I look at the -- when you look at  
18 the guidelines as it relates to this -- as it  
19 relates to the offense, I believe it's -- let me  
20 find it. The base offense level is 26 under 2M5.3.  
21 So then if you have the 12-level enhancement, that  
22 immediately gets you to a level 38. Okay?

23 THE COURT: Okay.

24 MR. WHALEN: And so assuming a scenario at  
25 a level 38 with no criminal history, like we do in



1 this case, you are now at 235 to 293 would be the  
2 guideline range just for that offense. And so I  
3 believe, even though it's not a stacked mandatory  
4 minimum, you now have an instance where this  
5 enhancement in and of itself has created a statutory  
6 maximum. It causes the Court to default to the  
7 maximum range of punishment, which would be 20  
8 years.

9 Congress decided that the range should be  
10 zero to 20. And so -- so to not have a jury make a  
11 finding about specific intent, was it his specific  
12 intent to make -- to influence another government,  
13 he's now being subjected to potential punishment  
14 greater, at the higher end of it, and so that's --  
15 that is causing him to suffer greater -- potentially  
16 greater punishment, and that would violate his Sixth  
17 Amendment right. And it should have been a jury  
18 issue and not for a Court finding in the presentence  
19 report.

20 THE COURT: Under this particular offense  
21 18 U.S.C. -- whatever it is -- 2332b(G)(F), b(g)(5),  
22 is that what we are talking about? 2332b(g)(5).

23 MR. WHALEN: That's the -- that's the  
24 definition of what a federal crime of terrorism is.

25 THE COURT: Okay. Let's find a specific

1 statutory provision that this relies upon.

2 MR. WHALEN: Your Honor, it's 2339B,  
3 18 U.S.C. Section 2339B.

4 THE COURT: Now, if I look at 2339B,  
5 what's going to be the maximum thing you can get for  
6 that, maximum punishment?

7 MR. WHALEN: Twenty years, Your Honor.

8 THE COURT: Okay. Okay. Twenty years,  
9 but we did a 12-month -- 12-year -- 12  
10 enhancement --

11 MR. WHALEN: Yeah, a 12-level enhancement  
12 that really bumps you up against the maximum. And  
13 if you had a criminal history more than that, then  
14 the guideline range would then exceed -- always  
15 exceed the statutory maximum. And so because now  
16 the Court is in a position that you have to make a  
17 finding that he had that specific intent, then I  
18 think that falls into that -- that denies him his  
19 right of having a jury decide this issue because it  
20 does affect his punishment because they are not  
21 making a finding about his specific intent because  
22 it wasn't part of the underlying offense.

23 THE COURT: Okay. Okay. And is there any  
24 other, you know, causes of action that caused this  
25 to go above 20? Any other causes of action that

1 we've got here?

2 MR. WHALEN: No. And what's happening,  
3 though, is they then have -- you have the false  
4 statement counts. And so now, as a result of them  
5 pleading the false statement counts, you can then  
6 run them consecutively. And so now it's allowing --  
7 the way they charged it has allowed the Court now to  
8 assess a punishment greater than 20 years.

9 THE COURT: Okay. Okay. For that reason  
10 only, but not because of the 12-level enhancement.

11 MR. WHALEN: Correct. Correct, Your  
12 Honor.

13 THE COURT: Okay.

14 MR. WHALEN: All right. So that's our  
15 objection as it relates to the 12-level enhancement.

16 THE COURT: Let me hear -- if you would  
17 step aside, I would like to hear from the government  
18 on this.

19 MR. WHALEN: Sure.

20 THE COURT: Go ahead. Let me just find  
21 this in the statute. 2339. Okay.

22 MS. MARTIN: Yes, Your Honor.

23 The defendant, Said Rahim, was actually  
24 charged with one count of conspiracy to commit  
25 material support of terrorism, one count of

1 attempted material support of terrorism, and six  
2 counts of false statements with a terrorism  
3 enhancement for --

4 THE COURT: Okay. Conspiracy, and then  
5 attempt to do the thing.

6 MS. MARTIN: Yes.

7 THE COURT: And all of those are 20-year  
8 offenses.

9 MS. MARTIN: Right. So we are at 40 stat  
10 max.

11 THE COURT: And then the false statements.

12 MS. MARTIN: Are each -- there are six of  
13 them, and they are each -- the statutory maximum is  
14 eight years. So total of 48 with those. So if you  
15 combine it with all, the statutory max is 88 years.

16 THE COURT: Okay.

17 MS. MARTIN: I believe what Mr. Whalen is  
18 making is an Apprendi argument and saying that it is  
19 something that should have been found by the jury.

20 THE COURT: Yeah, partly I think he is.

21 MS. MARTIN: And that's actually not  
22 accurate in. U.S. v. Hinojosa, 749 F.3d 407, 412 to  
23 413. It's a 5th Circuit case from 2014.

24 THE COURT: Where what was charged?

25 MS. MARTIN: I don't believe it was a

1 terrorism charge, Your Honor, but it said that  
2 Apprendi does not apply to the guidelines because  
3 Booker made the guidelines advisory only. So the  
4 Court is not bound by the guidelines.

5 THE COURT: Okay.

6 MS. MARTIN: Nothing about this 12-level  
7 enhancement has increased the statutory maximum or  
8 the statutory minimum, so it does not have to be  
9 found by a jury beyond a reasonable doubt.

10 THE COURT: Well, if he's looking at --  
11 okay, I'm just -- because I'm -- I'm the last person  
12 involved in this, but I'm looking at -- he's looking  
13 at 360 to 1,056 months. And how is that -- because  
14 you said 88 months. How is it increased up 360?

15 MS. MARTIN: I'm sorry, 88 years.

16 THE COURT: Oh, 88 years. Okay. I'm  
17 sorry.

18 MS. MARTIN: So he's looking at zero to 88  
19 years.

20 THE COURT: Okay. Okay.

21 MS. MARTIN: I apologize if I said months.

22 THE COURT: Well, I think you did, but I  
23 don't know.

24 MS. MARTIN: So nothing about the  
25 sentencing guidelines has increased that. That's

1 what it was when he walked into court on the first  
2 day of trial.

3 THE COURT: Okay. Okay.

4 MS. MARTIN: So nothing about the  
5 guidelines -- guideline range being 360 to life has  
6 increased his statutory minimum or statutory  
7 maximum.

8 THE COURT: Okay. I think he also is --  
9 well, Mr. Whalen, are you also complaining about the  
10 offense conduct and the calculated to -- you know,  
11 do the whatever?

12 MR. WHALEN: Yes. And I haven't really --  
13 I think that's part of -- we will kind of progress  
14 through that. But that is the underlying argument,  
15 is that because if you were to not have the 12-level  
16 enhancement, then his guideline range and how they  
17 are grouped together would be significantly lower,  
18 which I put in my objections. And so you're looking  
19 at a guideline range of --

20 THE COURT: I'm sorry.

21 MR. WHALEN: What I had in my objections  
22 is you're looking at -- without the 12-level  
23 enhancement, you're looking at a guideline range of  
24 78 to 97 months and so -- for those counts, and they  
25 are grouped together. So I think it is significant.

1 And so now you have this huge disparity as far as  
2 what the guideline range is with that finding versus  
3 not. And so that's part of it.

4 THE COURT: Okay. Okay. And you say --  
5 but the finding has to underlie offense conduct and  
6 calculate it, too, right?

7 MR. WHALEN: Correct, yeah.

8 THE COURT: Okay. So do you think there's  
9 a problem with that?

10 MR. WHALEN: Ask me that again.

11 THE COURT: Well, do you think there's a  
12 problem with -- you know, you said that you --  
13 you -- you sort of made up a statement about the  
14 guidelines and -- you know, all of that. But are  
15 you also saying the offense conduct and calculated  
16 to do something is not in this -- not enough? You  
17 know --

18 MR. WHALEN: The underlying offense  
19 conduct doesn't support the enhancement?

20 THE COURT: Uh-huh.

21 MR. WHALEN: That's part and parcel of the  
22 objection is that there wasn't enough evidence to --  
23 one, there's this specific intent argument.

24 THE COURT: Right, I've got your specific  
25 intent argument.

1 MR. WHALEN: But also there was no -- and  
2 I think I tried to say that -- that there was no  
3 evidence to support that finding, that it was  
4 conclusory and there wasn't sufficient evidence to  
5 do that.

6 THE COURT: I think you did, too, but I  
7 wanted to make sure you said it today.

8 MR. WHALEN: Yes, that's correct, Your  
9 Honor.

10 THE COURT: Ms. Martin, go ahead. I would  
11 like to hear you talk about that.

12 MS. MARTIN: Yes, Your Honor. The  
13 government has provided the Court and defense with a  
14 binder of exhibits.

15 THE COURT: Okay.

16 MS. MARTIN: I'm also prepared to put the  
17 agent on if the Court would prefer, but essentially  
18 he would be testifying to the contents of the  
19 exhibits.

20 THE COURT: Okay. Well, tell me what the  
21 exhibits say, and I'll see what I want to do.

22 MS. MARTIN: Yes, Your Honor.

23 The first exhibit is Government's  
24 Sentencing Exhibit 1. That is the transcript of the  
25 testimony of the government's expert, Lorenzo



1 Vidino.

2 THE COURT: Okay.

3 MS. MARTIN: At this time the government  
4 would move to admit it for sentencing.

5 THE COURT: How about -- you want to ask  
6 for all these exhibits to be admitted for  
7 sentencing? What is it, 1 through what?

8 MS. MARTIN: Your Honor, the other  
9 exhibits that I can call out for the Court all  
10 maintain their trial exhibit numbers, and they were  
11 all admitted at trial.

12 THE COURT: Let's say, A, B, C, D --

13 MS. MARTIN: Your Honor, those are all  
14 contained within Government Sentencing Exhibit 1.  
15 Those are just to direct everyone to the specific  
16 portions of the transcript.

17 THE COURT: Okay. And then the other  
18 exhibits are trial exhibits.

19 MS. MARTIN: Yes, Your Honor.

20 THE COURT: They are in evidence, like  
21 53 -- go ahead and number those.

22 MS. MARTIN: Your Honor, it's Trial  
23 Exhibit 53, 85, 170, 176, 178, 180, 182, 190. And  
24 then 192 and 194 were also trial exhibits that go to  
25 another objection.

1 THE COURT: Any objection?

2 MR. WHALEN: Your Honor, just out of an  
3 abundance of caution, I'm not sure what objections  
4 we may have lodged at trial to these exhibits and to  
5 the testimony of the experts. So we -- to the  
6 extent I don't want to waive those, I think for the  
7 limited purposes of sentencing I don't have an  
8 objection, but to the extent I objected to them at  
9 the trial, I do reurge them.

10 THE COURT: I overrule your objections for  
11 purposes of sentencing, and all of those exhibits,  
12 Exhibit A through I of 1 and all those others that  
13 you just mentioned, Ms. Martin, are in.

14 MS. MARTIN: Thank you, Your Honor.

15 Your Honor, with respect to Exhibit 1,  
16 which is the testimony of --

17 THE COURT: I would rather have you put  
18 the agent on. I really would. Go ahead.

19 MS. MARTIN: Your Honor, the government  
20 calls Special Agent Dwayne Golomb.

21 THE COURT: Come on up here, Agent.

22 COURT SECURITY OFFICER: Raise your right  
23 hand.

24 (Witness sworn.)

25 THE WITNESS: I do.

1 COURT SECURITY OFFICER: Please state and  
2 spell your name for the record.

3 THE WITNESS: Special Agent Dwayne,  
4 D-W-A-Y-N-E, Golomb, G-O-L-O-M-B.

5 THE COURT: Okay. Please speak into the  
6 microphone and go ahead.

7 SPECIAL AGENT DWAYNE GOLOMB,  
8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. MARTIN:

11 Q. Special Agent Golomb, you are the case agent in  
12 the case of United States versus Said Rahim; is that  
13 correct?

14 A. That is correct.

15 Q. And is it your understanding that the first  
16 prong of the definition of a Federal Crime of  
17 Terrorism is that it is calculated to influence or  
18 to affect the conduct of government by intimidation  
19 or coercion or to retaliate against government  
20 conduct?

21 A. Yes, it is.

22 Q. And if you could take a look at the -- at your  
23 binder, Exhibit 53 --

24 THE COURT: Okay. You think that's the  
25 first prong, calculated to?

1 MS. MARTIN: Yes, Your Honor.

2 THE COURT: Okay.

3 MS. MARTIN: And the second prong, Your  
4 Honor, is just that's it's one of the listed  
5 offenses.

6 THE COURT: Yeah, I thought it was  
7 opposite, but yes, I've got it.

8 Q. (By Ms. Martin) Special Agent Golomb, what is  
9 Government's Exhibit 53?

10 A. Exhibit 53 is the State Department notice, the  
11 designation for the Islamic State as a terrorist  
12 organization.

13 Q. And that is ISIS or ISIL?

14 A. ISIS or ISIL, correct.

15 Q. And so the United States Government recognizes  
16 ISIS or ISIL as a foreign terrorist organization.

17 A. Yes, ma'am.

18 Q. And were you present for the entirety of the  
19 trial in this matter?

20 A. Yes, I was.

21 Q. So you heard the testimony of Lorenzo Vidino?

22 A. I did.

23 Q. And have you reviewed the transcript of his  
24 testimony?

25 A. Yes, I have.

1 Q. And at Government Sentencing Exhibit 1, which  
2 is in your binder, if you will take a look at page  
3 29 -- and that's behind Tab A, Your Honor --  
4 beginning with line 3, and the question is:

5 "Okay. And what about -- what about ISIS  
6 wanting attacks in infidel countries? Can you  
7 explain that?"

8 And what was Dr. Vidino's answer?

9 A. To summarize he said: Yes. ISIS, as always,  
10 encouraged attacks against the West, but the message  
11 has become particularly strong after September 2014.  
12 September 2014 is when the U.S.-led international  
13 coalition started bombing and attacking ISIS. Their  
14 reaction from ISIS was of course military on the  
15 ground, but also calling for attacks, mobilizing its  
16 global network of supporters to carry out attacks in  
17 the countries that were attacking ISIS. The message  
18 was, they attack us here, we attack them back home.

19 Q. And the question at line 17: "What is the  
20 reasoning for that?"

21 And what did Dr. Vidino testify?

22 A. The reason for that is different strategic  
23 purposes for ISIS. One is, of course, weakening the  
24 willingness of the coalition. So they estimated  
25 that if we attack, let's say, Spain, with terrorist

1 attacks, Spanish people will basically -- and the  
2 government will then pull out of the coalition, the  
3 coalition will become weaker, and that's obviously  
4 good for ISIS.

5 There's also the second argument of a second  
6 strategic objective, which is the idea of polarizing  
7 that country's society, creating that polarization  
8 in western societies; the idea of creating a divide  
9 between Muslims and non-Muslims; and that perception  
10 of mainstream society that all Muslims want to carry  
11 out attacks, which creates depolarization in society  
12 which serves ultimately ISIS purpose.

13 And finally, the last point is simply of  
14 revenge. If you attack us here, we will go and we  
15 will kill you there. So all of this is a series of  
16 attacks we've seen in the West for the last five  
17 years -- now, seven or eight years -- is basically a  
18 response to those dynamics.

19 Q. And so that testimony by Dr. Vidino was  
20 specifically about ISIS's goals; is that correct?

21 A. Yes, that's correct.

22 Q. And going to that first prong, calculated to  
23 influence or affect the conduct of government by  
24 intimidation or coercion. Was Dr. Vidino testifying  
25 that the terrorist attacks are to influence the

1 governments that are part of the coalition forces to  
2 back away and leave ISIS alone?

3 A. Yes, that's correct.

4 Q. Then, at the very end, when he gave the third  
5 strategic reason, did he say specifically it was for  
6 revenge or to retaliate against those countries?

7 A. Yes, that's correct.

8 Q. And then if you will take a look at that same  
9 exhibit, Government's Sentencing Exhibit 1, and  
10 behind Tab B is page 36. And if you will look at  
11 lines 10 to 23.

12 And the question is: "Have you had the  
13 opportunity to review the transcripts of the  
14 defendant's statements on that Zello channel in this  
15 case?"

16 And Dr. Vidino says: "I have."

17 And the question is: "And what were your  
18 initial reactions to those transcripts?"

19 Can you read Dr. Vidino's answer?

20 A. Dr. Vidino wrote and replied -- well, his first  
21 reaction was the size of -- quantitatively, a lot of  
22 information, a lot of activity taking place on that  
23 platform, referencing Zello. I would say  
24 specifically when it comes to the defendant, it was  
25 pretty clear he was somebody with fairly deep

1 knowledge and understanding of ISIS, of its jargon,  
2 of its strategy, of its priorities, of its  
3 operations.

4 Q. And so the first portion of that transcript was  
5 ISIS in general. And that was portion of the  
6 transcript was directed specifically to Dr. Vidino's  
7 opinions by Said Rahim; is that correct?

8 A. That is correct.

9 Q. And he believed him to have a deep knowledge  
10 and understanding based on the transcripts of ISIS's  
11 strategies.

12 A. That is correct, yes.

13 Q. And those strategies that we just discussed.

14 A. Yes.

15 Q. That match up with prong one.

16 A. Yes.

17 Q. And if we could take a look at Government's  
18 Exhibit 176 in your binder.

19 And page 1 beginning at line 6, the defendant  
20 Said Rahim says: "Yeah. Now, the brothers in  
21 Syria, I mean those that are now present in Turkey,  
22 God willing, now they must...that's it, pledge  
23 allegiance to the Islamic State and be lone wolves  
24 and attack the Turkish government, its individuals,  
25 its constituents, its police, its quarters, its



1 banks, its tourist sites, its vessels, its  
2 nightclubs, and everything. Let everything that  
3 pertains to Turkey become a target for you."

4 What is a lone wolf?

5 A. Lone wolf refers to ISIS supporters in the West  
6 that are unable to travel into Syria Iraq and carry  
7 out attacks on behalf of ISIS.

8 Q. Does Said Rahim specifically mention the  
9 Turkish government?

10 A. Yes, he does.

11 Q. If you will take a look at the same exhibit,  
12 176, page 2, beginning at line 10: "So, I mean, I  
13 know there's a large number of the brothers present,  
14 I mean in the Syrian land."

15 And when he says "brothers," is he referring to  
16 other ISIS members?

17 A. Yes, he is.

18 Q. And continuing on line 12: "In Turkey, I don't  
19 know, maybe there is a million, a few million.

20 Let's say there is a 100,000, 100,000. I mean, if  
21 about 20- or 30,000 of those were lone wolves -- and  
22 by the way, I am being modest with numbers -- if  
23 there were 30,000 lone wolves, oh, man, that is it.  
24 It will be raised. The call to prayer will be at --  
25 at -- at the forbearing mosques, and over there the

1 Caliphate banner will be raised. Attack them."

2 Continuing on line 24: "Take this matter  
3 seriously and I mean not jokingly. That's it, the  
4 Emir of the Believers the Islamic State official  
5 spokesman, Abu Hasan al-Muhajir, may God protect  
6 him, said to target Turkey. That's it. This came  
7 based on -- on a fatwa and a study of the facts."

8 And that statement is Said Rahim, again,  
9 speaking about attacks on a specific government.

10 A. He's speaking and calling out for attacks on  
11 that government, yes.

12 Q. What government was that?

13 A. The Turkish government.

14 Q. Did Dr. Vidino specifically address that  
15 transcript of the defendant's in his testimony?

16 A. Yes, he did.

17 Q. And if you will turn to Tab C in your binder,  
18 which is government's sentencing Exhibit 1, page 85,  
19 beginning at line one, Dr. Vidino stated: "He's  
20 basically saying that there is a large presence of  
21 ISIS supporters in Turkey. When he talks about  
22 brothers, that means ISIS supporters. He  
23 guesstimates the numbers, but it's an imaginative  
24 20- to 30,000 lone wolves, so individuals that carry  
25 out attacks independently, were to do so, were to

1 carry out attacks. So imagine what kind of upheaval  
2 that would cause in Turkey, and the banner of the  
3 Caliphate would be raised. So basically Turkey  
4 would be defeated, would be conquered and would  
5 become part of the Caliphate."

6 Is Dr. Vidino talking there about one of the  
7 goals of ISIS?

8 A. Yes, he is.

9 Q. And what goal was that?

10 A. To continue to expand its territory to take  
11 over other nations bordering where they are at.

12 Q. If we can look at Government's Exhibit 194 in  
13 your binder. It's the last exhibit. And beginning  
14 at the very bottom of page 1, line 28, and this is  
15 Said Rahim speaking. He says: "So when will you  
16 rise up? When will you rise up? I mean attack the  
17 er, policemen with -- with shoes, slippers and  
18 stones. Do anything but do not stand idle doing  
19 nothing. I mean you are being consumed; for here  
20 came the Magi, I mean they expropriated your homes...  
21 er, lands. So rise up, rise up! I mean there are  
22 many millions in -- in Turkey, so rise up. I mean  
23 what are you waiting for? Here, we appeal to-to-to  
24 the brothers in al Sham land that are er, present  
25 currently in Turkey; we are appeal to them to attack

1 the -- the false leaders members, government  
2 establishments airline companies, police stations,  
3 government centers, movie theaters and tourism  
4 places attack them. Set fire to Turkey. Damn  
5 Erdogan. Damn the infidel."

6 Who is the Erdogan?

7 A. Erdogan is the President of Turkey.

8 Q. And do you see in this transcript the  
9 defendant, Said Rahim, specifically mentioning  
10 attacking a government?

11 A. Yes, he is. He is calling for attacks on that  
12 government.

13 Q. And did Dr. Vidino also address that specific  
14 transcript during his testimony?

15 A. Yes.

16 Q. And if we can take a look at Tab D to  
17 Government Sentencing Exhibit 1, that would be page  
18 98. And beginning at line 7. Dr. Vidino explained:  
19 "He is making repeated appeals to mostly Arabs, ISIS  
20 supporters living in Turkey, to carry out attacks to  
21 rise up against Turkey, particularly trying to  
22 mobilize the Syrian refugee community, which is very  
23 large, that exists in neighboring Turkey, to rise up  
24 against the government and carry out attacks and so  
25 on."

1 In that portion, was Dr. Vidino explaining that  
2 the defendant is calling for attacks on the Turkish  
3 government?

4 A. Yes, he was.

5 Q. And this defendant in the transcripts that you  
6 read, the many transcripts, he hates Turkey, is that  
7 correct?

8 A. That is correct.

9 Q. And then if we could take a look at Tab G, and  
10 I understand that's a little bit out of order. But  
11 that's still Government's Sentencing Exhibit 1, Tab  
12 G, and that begins on page 131.

13 And Dr. Vidino explains: "It's pretty open, as  
14 open as it gets; basically saying that Turkey needs  
15 to be punished. But this is -- what's striking is  
16 that he clearly identifies with ISIS as 'our  
17 terrorism,' that basically Turkey, by virtue of its  
18 foreign policy, its positions, is a target, and he  
19 keeps praising the attack as 'our terrorism.'"

20 That's referring to a different transcript.  
21 But do you recall that portion of the testimony?

22 A. Yes, ma'am.

23 Q. And do you remember that attack to be an attack  
24 on a nightclub in Turkey?

25 A. Correct, the Reina Nightclub, yes.

1 Q. And if we could take a look at Government's  
2 Exhibit 182 in your binder.

3 Beginning on page 3. Starting at line 7. And  
4 this is again Said Rahim speaking: "This message is  
5 to France, I mean er, the aircraft carrier or these  
6 military groups Charles De Gaulle or Charl-Charl De  
7 Gaulle that are I mean heading now er, towards the  
8 uh Arab region, the Islamic region to our countries  
9 er of course think and go back go back because it is  
10 going to be destroyed this er this Charles De Gaulle  
11 is going to be destroyed and er I mean you do not  
12 learn a lesson; Hollande 75 of your people were  
13 wasted like dogs and like animals, when you were the  
14 president. They died and were killed, good  
15 riddance. Think about your people man, think about  
16 your people and leave the Muslims alone."

17 What is he referring to there with the 75  
18 people in France that were wasted like dogs and  
19 animals?

20 A. He's referring to the lone wolf attack that  
21 happened in Nice, France, on Bastille Day on July  
22 14th of 2016.

23 Q. And if you continue in that same transcript on  
24 page 5, line 1, Said Rahim says: "Here you are,  
25 opposing the Muslims and this will happen to you, O

1 Frenchmen, you want ... you oppose Islam and this is  
2 what will happen to you; you get trampled by trucks.  
3 Tomorrow a er, suicidal er, martyrdom operation, or  
4 a suicide operation tomorrow that might be carried  
5 out by one of the Frenchmen, I mean other than  
6 Muslims, er, just like that."

7 In this portion of the transcript, Said Rahim  
8 is saying, if you mess with the Muslims, we're going  
9 to attack you; is that correct?

10 A. That is correct.

11 Q. Does that fit the definition of a federal crime  
12 of terrorism with respect to revenge?

13 MR. WHALEN: Your Honor, I'm going to --

14 A. Yes, ma'am.

15 THE COURT: I'm sorry?

16 MR. WHALEN: I'm going to object to him  
17 making a legal conclusion. I think it's out of his  
18 scope of expertise.

19 THE COURT: Overruled. Go ahead.

20 MS. MARTIN: Yes, Your Honor.

21 Q. (By Ms. Martin) And then if we could turn to  
22 page 11 of the same exhibit. Beginning at line 23,  
23 said Rahim says: "Okay. The time of punishment is  
24 here, what -- what time to settle the account, time  
25 to settle the account, I mean the time to settle the

1 account is here, er, that is brought to you by the  
2 monotheists, er, so here they are taking revenge on  
3 you O terrorist, you who terrorized the peaceful  
4 people and killed them. I advise you to think and  
5 pull your army er, pull your army er from the region  
6 of the Muslims and that is it and you pay the  
7 jizyah, I mean as I said, which is the best solution  
8 for there is no other choice, there is no other  
9 choice, there is no other choice, nobody is going to  
10 negotiate with you, nobody is going to negotiate  
11 with you. The State of the Caliphate is not going  
12 to send anyone to negotiate with you. No, no, no,  
13 there won't be."

14 THE COURT: And I think I've got the gist  
15 of what you are trying to do, Ms. Martin. You've  
16 got Government's Exhibit -- I'm looking through your  
17 response, 176, 178, 194, 182, 185, right?

18 MS. MARTIN: Yes, Your Honor.

19 THE COURT: Okay. There's no reason to go  
20 through those anymore. Do you have anything else?  
21 I would like to talk to you about how you want to  
22 answer the specific intent argument. I think you  
23 have answered that, but I want to hear you say. Do  
24 you need him up here anymore?

25 MS. MARTIN: No, Your Honor.



1 THE COURT: I want to give Mr. Whalen a  
2 chance to cross-examine him.

3 And I have all your exhibits. They are in  
4 evidence, all right, and your response.

5 **CROSS-EXAMINATION**

6 **BY MR. WHALEN:**

7 Q. Agent, good afternoon. How are you?

8 A. Good, sir. Thank you.

9 Q. Just a couple of points as it relates to -- I  
10 think you testified to this at trial, and I just  
11 want to see whether or not it's the same, is that  
12 there's no specific incident, identifiable terrorism  
13 incident that relates to anything that Mr. Rahim  
14 said on Zello, correct?

15 A. Nothing that was presented in court, no.

16 Q. Okay. And would you agree with me that as  
17 related to the Pulse Nightclub and the Nice, France  
18 incident, he was speaking about those after the  
19 fact, correct?

20 A. That is correct.

21 Q. And would you agree with me that -- let me see  
22 how to phrase this. You would agree with me that  
23 Mr. Rahim, his role was to -- simply is talking on  
24 this channel, correct?

25 A. I disagree.

1 Q. Okay. But he didn't take any steps, himself.  
2 He did not commit -- he didn't try to bomb anybody  
3 or kill anybody or do anything like that; you agree  
4 with that?

5 A. Did he commit an act of violence himself?

6 Q. Correct.

7 A. Not in regards to the channel, no.

8 Q. Okay.

9 THE COURT: Mr. Whalen.

10 MR. WHALEN: I'm just thinking.

11 I will pass the witness at this point.

12 THE COURT: Ms. Martin.

13 MS. MARTIN: Nothing further.

14 THE COURT: I would like you to address  
15 his specific intent argument. I think you have in a  
16 way, but I would like to hear from you.

17 MS. MARTIN: Yes, Your Honor. And what I  
18 was trying to demonstrate through the transcripts is  
19 that we have the testimony of Dr. Vidino of what  
20 ISIS's goal is. This defendant was convicted of  
21 material support for that terrorist organization,  
22 ISIS. But beyond just he was part of ISIS and these  
23 are ISIS's goals, he demonstrated and fit within  
24 this federal crime of terrorism. He is trying to  
25 influence countries by recruiting lone wolves to

1 attack in these countries in order to conquer them  
2 for ISIS and in order to exact revenge on them for  
3 their involvement in Syria and in the area of the  
4 Levant. So I think that fits squarely within the  
5 definition of a federal crime of terrorism. And I  
6 really can't imagine a fact pattern that fits more  
7 within that definition.

8 THE COURT: What about specific intent?  
9 Exactly -- you know, that's his argument. So what  
10 do you say about that?

11 MS. MARTIN: Your Honor, I don't believe  
12 that that's the law, but -- but I don't think you  
13 have to make that determination because there's so  
14 much specific intent demonstrated here.

15 THE COURT: Okay.

16 MS. MARTIN: But I do believe that  
17 knowingly is all that needs to be demonstrated. But  
18 I don't believe that -- you have to get to that,  
19 because I think specific intent is demonstrated  
20 here.

21 THE COURT: Okay. That's what I wanted to  
22 hear.

23 Okay. Mr. Whalen, what else on this  
24 objection?

25 MR. WHALEN: I don't have anything

1 additional to add to that objection.

2 THE COURT: On this objection, then -- is  
3 there anything else that goes through this objection  
4 that we need to keep -- I need to save ruling on it  
5 for?

6 MR. WHALEN: Yes, Your Honor. There is  
7 one more thing. I know that the government has  
8 presented that supplemental brief as related to Khan  
9 about double counting that --

10 THE COURT: Oh, yes, yes, I've got that.

11 MR. WHALEN: I understand what the case  
12 says, but I'm still going to reurge it is  
13 consistent -- it is double counting. Because the  
14 basic offense is you're providing -- you're charged  
15 with an offense of providing material support to a  
16 terrorist organization, which is contemplated in the  
17 statute. And so, therefore, you're then going to  
18 add an enhancement because it involved this crime of  
19 terror. So it -- to me, it is double counting. And  
20 I will reurge that objection. I understand what the  
21 5th Circuit has said, but I'm going to reurge it.

22 THE COURT: Okay. You do agree that the  
23 5th Circuit has said that that's not true.

24 MR. WHALEN: I do agree with that, that is  
25 the case law, but I'm still going to reurge the

1 objection, Your Honor.

2 THE COURT: Okay. Okay. All right.

3 MR. WHALEN: Your Honor, so that would  
4 conclude as it relates to the 12-point enhancement.

5 THE COURT: Okay. Anything else,  
6 Ms. Martin, as to --

7 MS. MARTIN: No, Your Honor.

8 THE COURT: I do think, Mr. Whalen, you  
9 make the best argument you could possibly make, that  
10 anyone else would make for this, not counting this.  
11 But I don't think the guidelines are susceptible to  
12 that Apprendi argument. And I also think that she's  
13 shown -- aside from that, within the guidelines,  
14 she's shown specific intent, and she's also shown  
15 knowingly. But she's shown specific intent over and  
16 over again. So I think she has shown it, it's an  
17 enumerated offense, and it's -- it is calculated to  
18 influence or affect the conduct of government by  
19 intimidation or coercion or retaliation against  
20 government conduct.

21 So I will keep the 12-point enhancement.

22 MR. WHALEN: Okay.

23 THE COURT: Go ahead.

24 MR. WHALEN: Your Honor, our next  
25 objection relates to the two-level enhancement for

1 providing material support that would result in a  
2 violent attack. There's two bases for the  
3 objection. The way I read it, and my objection is,  
4 this implies that material support was actually  
5 provided. He was charged with conspiracy, so that  
6 was simply just an agreement to do it. And then the  
7 other part is the attempt to provide material  
8 support. And so I don't think there would -- even  
9 with the attempt, it wasn't actually provided to a  
10 terrorist organization. So since there was never  
11 any evidence that actual support was ever provided,  
12 then I don't think the enhancement should apply.

13           Additionally, I do think that the words  
14 "violent terror activity" is not defined in the  
15 guidelines and it is vague. I understand that  
16 there's case law that says it's -- you can't make a  
17 vagueness argument, but I'm going to make it anyway  
18 because I do think it is vague. So I do think it  
19 makes it difficult for the Court to then figure out  
20 how to apply it, as well as for Mr. Rahim to argue  
21 against it.

22           THE COURT: Okay.

23           MR. WHALEN: Because I would, you know,  
24 add the point -- the way the case law is set up as  
25 far as, you know, if you have an objection to any

1 type of factual finding -- you know, the burden is  
2 on the defendant to give some contrary evidence.  
3 And so because it is vague, how do you give contrary  
4 evidence. I don't think there's any evidence that  
5 there was a violent terror activity. So how do you  
6 give some contrary evidence that there wasn't  
7 material support provided. They haven't proven  
8 that, and they never charged him with that. So I  
9 think that, in and of itself, shows the two-level  
10 enhancement shouldn't apply.

11 THE COURT: Okay. Thank you.

12 Ms. Martin? Number 3.

13 MS. MARTIN: Yes, Your Honor.

14 Your Honor, first of all, I believe that  
15 the guideline says in (b)(1)(E).

16 THE COURT: In what?

17 MS. MARTIN: I'm sorry, in Sentencing  
18 Guideline Section 2M5.3(b)(1)(E).

19 THE COURT: Yes, I thought that's what you  
20 were talking about.

21 MS. MARTIN: The specific language is  
22 actually commission of a violent act, and not a --  
23 what language Mr. Whalen was using, I believe he  
24 said a violent terrorist act. Is that correct?

25 MR. WHALEN: I said "violent terror

1 activity."

2 MS. MARTIN: Violent terror activity.

3 THE COURT: And it says -- let's see.

4 Provision of funds or other materials support or  
5 resources with the intent, knowledge, or reason to  
6 believe they are to be used to assist or commit a  
7 violent act or something like that.

8 MS. MARTIN: Yes, Your Honor.

9 So that's the first point I would make.  
10 But the guidelines do not require that the violent  
11 act be completed. So the conspiracy and the attempt  
12 falls squarely within this offense characteristic.

13 THE COURT: And what cases do you have on  
14 that?

15 MS. MARTIN: Your Honor, I don't believe I  
16 cited any cases on that. I believe that's just  
17 argument.

18 THE COURT: Okay.

19 MS. MARTIN: But I believe even the  
20 language contemplates that when it says, "with the  
21 intent, knowledge, or reason to believe they are to  
22 be used."

23 THE COURT: Um-hum.

24 MS. MARTIN: So it doesn't even  
25 contemplate a completed act, just with the intent



1 that it's going to be used for a violent act.

2 THE COURT: Okay.

3 MS. MARTIN: And in this case, the  
4 evidence was that this defendant provided material  
5 support and resources, recruiting himself, and  
6 certainly there was evidence that that was for  
7 violence.

8 THE COURT: Government's Exhibit 190?

9 MS. MARTIN: Yes. Government's Exhibits  
10 190 and 192, Your Honor, which you have already  
11 admitted. And so unless the Court would like for me  
12 to read those, I won't.

13 But the first one is, again, Said Rahim.  
14 And he's talking specifically to an individual --  
15 I'm sorry. No, that's not correct. This is one  
16 where he is -- he's telling a young child -- he is  
17 talking to an individual.

18 THE COURT: Okay. He's talking to an  
19 individual here.

20 MS. MARTIN: Yes. And he is telling that  
21 child to commit an act of violence.

22 THE COURT: Um-hum.

23 MS. MARTIN: And it starts out at line --

24 THE COURT: "Do not look at your age."

25 MS. MARTIN: Yes, line 10: "We do not

1 look at your age, may God bless you, whether you are  
2 eight years old so ... or f-or four years or ten  
3 years; it does not matter, rather what your creed  
4 down deep in your heart is, the creed of al-Wala'  
5 wal Bara'. Meaning, may God bless you, you can now,  
6 I mean according to the area, to attack, I mean, as  
7 the Emirs of the Islamic State and the official  
8 spokesman of the Islamic State said, 'Be a lone  
9 wolf,' if you are able to do something in Turkey so  
10 I mean attack the infidels and the apostates the  
11 Turks, the Turkish police. If you are able to kill  
12 them then do so."

13 It goes on and on, but he's advocated to a  
14 specific person for an act of violence.

15 Again, Exhibit 192.

16 THE COURT: Who is he talking to?

17 MS. MARTIN: In Exhibit 192, Your Honor,  
18 he is talking on the channel to an unknown male.

19 THE COURT: Um-hum.

20 MS. MARTIN: And I think the Court will  
21 probably remember this one from trial, the attack on  
22 the Turkish nightclub happens. And there had been a  
23 previous statement by him about two weeks earlier to  
24 attack the nightclubs -- we just went over that  
25 transcript -- to attack the police, attack the

1 nightclubs.

2           And then after the attack -- and it was a  
3 New Year's Eve into New Year's Day party, two days  
4 later on the 3rd of January, 2017, Exhibit 192, page  
5 2, line 11 he says: "Also, if you recall, before  
6 from...I mean less than a month -- less than a  
7 month, I called upon the brothers, I mean, to target  
8 Turkey. But I...who am I to be heard, but I mean,  
9 praise be to God, the Lord of the Worlds. I ask God  
10 to grant me reward for it, for inciting brothers to  
11 perform jihad for the cause of God, for inciting  
12 brothers to perform jihad for the cause of God and  
13 to fight the enemies of Almighty God, God willing."

14           So whether the government can present  
15 evidence that he is specifically -- you know, that  
16 that act can be attributed to him. He certainly  
17 believes the act is attributed to him, and he should  
18 receive a reward from God for advocating and  
19 inciting the act. And so in that earlier  
20 transcript, that's exactly what he was doing. He  
21 was calling -- he was recruiting for violence and  
22 believes he was able to accomplish that goal.

23           THE COURT: Why is this not double  
24 counting?

25           MS. MARTIN: Why is this one not double

1 counting?

2 THE COURT: Did you argue this,  
3 Mr. Whalen?

4 MR. WHALEN: That goes to the 12-point,  
5 but I will take it.

6 THE COURT: All right. Sorry about that.

7 MS. MARTIN: And, Your Honor, that's  
8 the -- that's the only argument the government has  
9 on that, is just that he is advocating to specific  
10 people in some circumstances -- and sometimes it's  
11 just the channel at large -- for violence, specific  
12 violent acts, general violent acts and then takes  
13 credit and expects rewards in heaven for those  
14 violent acts.

15 THE COURT: Okay. Mr. Whalen.

16 MR. WHALEN: Your Honor, I don't really  
17 have anything additional to add. I mean, you have  
18 the -- what it says when it talks about the  
19 characteristics. You can read that. And I still  
20 don't think it applies, because I don't think  
21 there's any evidence to support it.

22 THE COURT: Thank you very much.

23 We're going to take a 10-minute break. I  
24 don't think my court reporter has had a break yet.  
25 we're going to take a 10-minute break.

1 (Recess taken.)

2 THE COURT: Let's go to the next  
3 objection -- no, no, we haven't finished that one.  
4 Anything else on that one?

5 MR. WHALEN: No, Your Honor.

6 THE COURT: Okay. Now, I'm just trying to  
7 make sure I understand this. Ms. Martin, are you  
8 saying that he attempted to do this but it's okay to  
9 use this guideline? Come on up. I mean, he  
10 attempted to do this, right?

11 MS. MARTIN: Yes, Your Honor, the charges  
12 in the indictment were conspiracy and attempt.

13 THE COURT: Okay. And I'm looking at --  
14 and this is reading from a case out of California.  
15 I hate to cite a case out of California. But it's  
16 741 Fed.Appx. 676, 2017, and it says: "Unless  
17 another guideline section expressly covers an  
18 attempted offense, the appropriate base offense  
19 level for an attempt is the generic attempt  
20 guideline found in 2X1.1."

21 And then it says: "Here the District  
22 Court used 2M5 --" you know, this one, 2M5.3, and it  
23 said it was erroneous. And so I just want to make  
24 sure that you can respond to that somehow, because  
25 it looks like it's the wrong guideline.

1 MS. MARTIN: Your Honor, so I don't  
2 have -- I have not read that case. But I mean, I'm  
3 just looking at 2X1.1., and it's for the substantive  
4 offense. It says in (a), 2X1.1(a), base offense  
5 level, "The base offense level --" oh, and you're  
6 saying that the specific characteristics in an  
7 attempt to increase by three and conspiracy to  
8 increase by three --

9 THE COURT: Well, I don't know what I'm  
10 saying. I just know that they say that it should be  
11 2x that you're applying here and not 2M, I think.  
12 If you want to look at the case, you're welcome to.

13 MS. MARTIN: Your Honor, I think one thing  
14 in 2339B, the attempt and conspiracy is actually  
15 written into the statute. So it is 2339B and  
16 just --

17 THE COURT: It says: "There is no express  
18 provision in the guidelines, in the application  
19 notes or commentary to the guidelines that directs  
20 the sentencing court to apply 2M5.3 to an attempted  
21 offense under 2339B."

22 Mr. Whalen, do you have anything to say  
23 about this? Do you want to look at my case?

24 MR. WHALEN: Yes.

25 THE COURT: I will pass it down, and

1 Ms. Martin you can look at this. I just found this.  
2 My computer is running very slow or I would have  
3 found some more.

4 (Pause in the proceedings.)

5 THE COURT: Mr. Portugal, are you going to  
6 address this?

7 Let Mr. Whalen finish so he can listen to  
8 you first. I will let him finish reading it.

9 (Pause in the proceedings.)

10 THE COURT: I realize it says it's  
11 harmless error, but we're not talking about that.

12 (Pause in the proceedings.)

13 THE COURT: Okay.

14 MR. PORTUGAL: Your Honor, I think the  
15 case is distinguishable on the following basis.

16 THE COURT: Go ahead.

17 MR. PORTUGAL: That case is dealing with  
18 setting a base offense level. And I think for  
19 purposes of the guidelines, the way you distinguish  
20 that is, in determining the base offense level, the  
21 Commission obviously is concerned with whether the  
22 base offense level should be treated for attempt and  
23 conspiracy as severely as it is for a completed  
24 crime.

25 And here in 2339B, attempt and conspiracy

1 are within the same statute. So the base offense  
2 level is obviously the same. And unlike the case  
3 that the Court has provided, here we're talking  
4 about an offense level increase. So that's the  
5 basis in which I would distinguish it.

6 THE COURT: Okay. Mr. Whalen, go ahead.

7 MR. WHALEN: Here's my initial reaction.  
8 Reading the case, it's talking about a 15-year  
9 statutory maximum. Now, the statute that we were  
10 charged under is a 20-year maximum. So without  
11 having to be able to do more looking, I wonder  
12 whether or not this case it applicable because the  
13 statute changed to increase the mandatory minimum.

14 I do kind of agree with the fact that  
15 since "attempt" is written in the statute, that  
16 makes sense that guideline would apply. I think  
17 where you have an attempt and it's not in the  
18 statute, my understanding is you go to 2x, but I  
19 could stand corrected.

20 THE COURT: It sounds like it would be two  
21 points either way, right?

22 MR. WHALEN: Right.

23 THE COURT: Ms. Martin, anything else?

24 MS. MARTIN: Nothing additional, Your  
25 Honor.



1 THE COURT: All right. Right now, we've  
2 just looked at this case, and I'm going to go ahead  
3 and accept it because it would be two points anyway.  
4 Right? Right?

5 MS. MARTIN: You mean the decrease would  
6 be two points?

7 THE COURT: Yes.

8 MS. MARTIN: Yes, it would be two points,  
9 Your Honor.

10 THE COURT: Okay. Let me just . . . oh,  
11 no, it's -- it's a two-level enhancement. Yeah.  
12 And Mr. Whalen makes the argument that it's not,  
13 it's attempt; it's not the actual offense, it's  
14 attempt.

15 MR. WHALEN: Well, I don't think -- Your  
16 Honor, just to clarify, I think what my point -- if  
17 that works, I will go with it. But I think what I  
18 was trying to say was, because they charged him with  
19 an attempt, he didn't provide -- you know, the way I  
20 read it, he provided and connected to that. And so  
21 because he attempted it, he never actually provided  
22 it. So that's kind of my rationale of why I focused  
23 on the word "attempt."

24 THE COURT: Since he attempted it,  
25 shouldn't it be the 2X attempt provision that

1 applies?

2 MR. WHALEN: I don't think -- I don't  
3 think so.

4 THE COURT: Okay.

5 MR. WHALEN: Because it is written in the  
6 statute as a way to commit the offense.

7 THE COURT: If you're going to say that, I  
8 think we're fine.

9 MS. MARTIN: Yes, Your Honor.

10 THE COURT: I will accept that and  
11 overrule your objection to number 3. First of all I  
12 will say I don't think it's vague. And I think the  
13 attempt, we've already talked about that. I'm fine  
14 with it the way it is, so I overrule that objection.  
15 Go ahead.

16 MR. WHALEN: Your Honor, just for  
17 clarification, I know you overruled objection as it  
18 relates to the 12-level enhancement. I just want to  
19 make sure, because the 12-level enhancement applies,  
20 it makes his criminal history a VI instead of a I.  
21 So I just want to make sure the objection is  
22 complete, that we are objecting to the 12-level  
23 enhancement and the increase in the criminal history  
24 to a VI. And I think that was covered by the  
25 objection, but I just want to make sure it's clear.

1 THE COURT: Ms. Martin, anything to say  
2 about that?

3 MS. MARTIN: No, Your Honor. I agree that  
4 objection covered both.

5 THE COURT: It does increase the criminal  
6 history category, right?

7 MR. WHALEN: Yes.

8 THE COURT: All right.

9 MR. WHALEN: And Your Honor, the next two  
10 objections, 4 and 5, do not affect guideline  
11 calculations.

12 Objection 4 relates to paragraph 70 and 71  
13 as -- as they have listed two offenses that were  
14 dismissed. We're asking that they not be included  
15 in the PSR.

16 THE COURT: I'm going to include them. I  
17 think they are includable.

18 MR. WHALEN: I understand.

19 THE COURT: They are not counted for  
20 anything.

21 MR. WHALEN: Right. And the next  
22 objection relates to paragraphs 85, 86 and 87. And  
23 we are objecting to that because it relates to  
24 alleged criminal history associated with his family  
25 members. And my concern with it is, one, I think

1 it's unusual to see that in a presentence report.  
2 In all the ones I've done, I've never seen that  
3 specifically. And my concern is that then there's  
4 this spillover effect that therefore it affects --  
5 because potentially his family members may have a  
6 criminal history, therefore that should affect how  
7 you sentence him. So I would object to the  
8 inconclusion of that.

9 It doesn't affect the guideline range, and  
10 I understand the Bureau of Prisons' issue, but I  
11 don't know if it was necessary to be included in the  
12 presentence report.

13 THE COURT: Ms. Martin.

14 MS. MARTIN: Your Honor, the government  
15 believes that the information is accurate.

16 THE COURT: You can speak into the  
17 microphone, please.

18 MS. MARTIN: Yes. The information is  
19 accurate. And based on the addendum that says the  
20 information was included to give a complete picture  
21 and inform the Bureau of Prisons, the government  
22 believes it's appropriately included in the PSR but  
23 doesn't believe it should affect the sentence.

24 THE COURT: No, it won't affect the  
25 sentence at all. But I think it needs to

1 appropriately be included in there because of a lot  
2 of reasons, one because this is a terrorism case,  
3 and a lot of what they are talking about is  
4 terrorism, at least violent related. And I think  
5 they need to know about that for visitors and all of  
6 that type of thing at the Bureau of Prisons. So I'm  
7 going to leave it. It doesn't mean -- and I will  
8 not consider any of it when I'm sentencing him. So  
9 that's 4 and 5 are overruled.

10 What's 6?

11 MR. WHALEN: And then 6, Your Honor,  
12 related to the paragraph 108, objecting to the  
13 calculated guideline range; in order to preserve our  
14 other objections, we object to paragraph 108.

15 THE COURT: Ms. Martin, come up here,  
16 please. It's best if you come up here.

17 MS. MARTIN: Yes, Your Honor. I believe  
18 that the Court's rulings on the two previous  
19 objections take care of that final objection, and so  
20 we believe the calculation is accurate.

21 THE COURT: Okay. Anything else?

22 MR. WHALEN: No, Your Honor, as to  
23 objections.

24 THE COURT: Overruled. That takes care of  
25 all of your objections?

1 MR. WHALEN: Yes.

2 THE COURT: Mr. Rahim, you can come up  
3 here now. Let's go ahead and hear from you on  
4 sentencing.

5 MR. WHALEN: Yes, Your Honor. First, for  
6 the record, I wanted to let the Court know that  
7 Mr. Rahim knows he has the right to allocute at his  
8 sentencing, and we have discussed his right to  
9 allocute at his sentencing. However, based on my  
10 advice and the fact that he did go to trial, I think  
11 it is in his best interest not to allocute in order  
12 to potentially not waive any objections he made at  
13 trial and be consistent in his plea of not guilty.

14 THE COURT: Mr. Rahim, do you agree with  
15 that? Yes or no.

16 THE DEFENDANT: Yes, I do.

17 MR. WHALEN: Your Honor, you have in front  
18 of you our sentencing memorandum. And I do think --  
19 I think it's fairly laid out, so I don't want to go  
20 over it.

21 THE COURT: Go ahead, I want you to --

22 MR. WHALEN: I will go over most of it.

23 When you look at the facts in the case,  
24 you know, as the way the guidelines are calculated  
25 and the range that you have, I think there's serious

1 issues that the Court should look at in fashioning a  
2 reasonable sentence. I think when you look at the  
3 character letters that you have from his family --  
4 and his family is here present in the courtroom.

5 THE COURT: And could they stand up  
6 please?

7 MR. WHALEN: Sure.

8 THE COURT: Thank you all very much for  
9 coming down. I really appreciate it. Thank you.

10 MR. WHALEN: And they supported him 33  
11 months ago -- that's how long he's been in  
12 custody -- and they support him today. And so I  
13 think he does have a strong family, but I also think  
14 when you look at Mr. Rahim's background, he has  
15 suffered some tragedies in his life, specifically as  
16 related to the death of his father.

17 THE COURT: Yeah, and that was from the  
18 Palestinians, correct?

19 MR. WHALEN: That is correct. The  
20 Palestinian authority tortured him and killed him.  
21 And you know, he suffers from that loss. He also,  
22 unfortunately, was in a tragic accident where he  
23 struck a child on his bicycle and resulted in his  
24 death. He suffered from that.

25 Also, he -- you know, he was going to

1 Jordan to see his daughter. And I think -- you  
2 know, I will continue to believe, and even though I  
3 respect the jury's verdict, I think he was going to  
4 Jordan to see his daughter. I think that was very  
5 clear and the evidence supported that. So that's  
6 why he was traveling to Jordan. So you have -- and  
7 he was separated from his daughter. So he's now not  
8 in a position to see her because he's been in  
9 custody and was arrested that day at the airport.

10 And so I do think from his background that  
11 he does have, you know, those things the Court  
12 should consider. He also, you know, has no scorable  
13 criminal history. The cases that he had were  
14 dismissed. So he stands before in his 40s with no  
15 criminal history.

16 I think it's also important, too, to look  
17 at, you know, obviously the seriousness of the crime  
18 and we -- I'm not trying to diminish the seriousness  
19 of it. I do believe that the Court has to make a  
20 sentencing determination that's fair and just, and I  
21 do not think that what the guidelines calculate in  
22 this case are fair and just. I don't think they  
23 support that. And I think what's interesting -- and  
24 I may jump around, because that's how my brain is  
25 working.



1 THE COURT: That's all right.

2 MR. WHALEN: -- is that they are grouped.  
3 All these counts are grouped. And so both the  
4 terrorism counts and the false statement counts are  
5 grouped together. And one of the notes as it  
6 relates to grouping -- I think this is  
7 appropriate -- is: "In order to limit the  
8 significance of the formal charging decision and to  
9 prevent multiple punishments for substantially  
10 identical offense conduct, this part provides rules  
11 for grouping offenses together," and these are  
12 grouped together. So really it's looking at it as  
13 one particular -- it's one offense and not the  
14 separate offenses.

15 And so the first point -- the reason to  
16 make that point is, I do think there shouldn't be  
17 any sentences run consecutively. I think they  
18 should be run concurrently that you impose in this  
19 case. And I think that goes back to my argument  
20 that in order -- they have chose to charge all these  
21 multiple false statement accounts. And I kind of --  
22 when thinking about how do I argue this to the  
23 Court, it's kind of akin in my mind of doing a lot  
24 of drug cases -- or bank robbery cases they had a  
25 bunch of 924(c)s and that increased the range of

1 punishment.

2 But in this particular case, we're talking  
3 about false statements in this case. And really  
4 when you look at the conspiracy to commit material  
5 support, as well the attempted, to me they are one  
6 and the same. Yes, they have different elements and  
7 they charge them differently and they are allowed to  
8 do that. But when you look at it, it's identically  
9 the same conduct that we are talking about and  
10 should be punished together, not consecutively.

11 I think it's also important, too, that the  
12 Court recalls the evidence that, you know, they had  
13 a pole camera up outside of his shop and his house  
14 for over a year and watched him significantly for  
15 over a year and there was no criminal conduct  
16 occurring during that year of time.

17 I do think because of his age that his  
18 likelihood to recidivate is low. I do think it's  
19 rare to get a letter from a jail counselor to say  
20 that he's performing well and doing his job. And I  
21 think it was also important he's able to perform  
22 work with minimal supervision. And so I think you  
23 have the character of him outlined for that.

24 So I think the other thing, too, is -- the  
25 other one that I do want to focus on is the

1 sentencing disparities. I think that's very  
2 important for the Court to look at.

3 THE COURT: Yeah, and I think you have  
4 those attached to something.

5 MR. WHALEN: Yes, I do, Your Honor. I did  
6 attach to the sentencing memo, different cases  
7 that --

8 THE COURT: Yes.

9 MR. WHALEN: -- that have come up,  
10 sentences that have been imposed as it relates to  
11 different offenses. And I think it's, you know,  
12 illustrative of the different types of sentences  
13 that have been handed out. But I think the reason  
14 why I highlighted some of these is that you have a  
15 person getting a 40-year sentence where he planned  
16 to detonate bombs in New York City and Times Square  
17 and the subway system. So now we have a guideline  
18 range that allows the Court to consider 360 to 88  
19 years. So I think when you look at his conduct, you  
20 know, I want the Court to weigh that and look at  
21 that in its totality.

22 I think it's also important, too, that we  
23 did provide to you the data from their expert  
24 witness, Mr. Vidino, about the average sentence for  
25 these type of offenses. And according to his data,

1 the average sentence is 13.6 years. I think that is  
2 significant.

3 So when you look at the characteristics of  
4 him, his age, the fact he's been incarcerated for  
5 the length of time that he has, and the nature of  
6 the offense in that it was him on a chat room, I  
7 don't think that he was going to Jordan to commit a  
8 terrorist act or join ISIS, he was going to see his  
9 daughter. And I think it's his involvement in a  
10 chat room is what he has been found guilty of. And  
11 so I think the Court needs to avoid the  
12 sentencing -- consider sentencing disparities as it  
13 relates to that, and I think that's one of the  
14 things that's important.

15 Obviously he doesn't have a significant  
16 criminal history prior to this. So as the Court has  
17 to consider protecting him from further crimes, I  
18 think that is a factor you have to consider but not  
19 a significant one due to his criminal history as  
20 well as his age.

21 And I think as far as vocational training  
22 and those matters, I think he has vocational  
23 training, he can be employed and was employed prior  
24 to his arrest in this offense.

25 So I think when you look at the totality

1 of Mr. Rahim, his character, his family, his  
2 background, the nature of this offense, as well as  
3 other offenses, to fashion a reasonable sentence, I  
4 do think a reasonable sentence below the guidelines  
5 recommended is appropriate. I do not think that the  
6 Court should run any counts consecutively. I think  
7 the maximum that he should be exposed to is 20  
8 years. I think that is what Congress intended for  
9 this offense. I mean, when you look at it and their  
10 intent was zero to 20 years, that's what they meant.  
11 I mean, that's what they felt was appropriate, was  
12 within that range. So when you look at that range  
13 of from zero to 20, 20 is intended for the most  
14 serious offense, the most -- the active act of  
15 committing a terrorist act and somewhere in between.

16 And so I think when you look at that, as  
17 far as what Congress intended as far as the range of  
18 punishment, 20 is the worst, zero is down at the  
19 bottom, it fits somewhere in the middle. And I  
20 think the false statement counts, I think you can  
21 consider that, but I think they should be  
22 concurrently, together, in fashioning a reasonable  
23 sentence. So we would ask the Court to do that.  
24 And I don't think it should be any sentence greater  
25 than what the statutory maximum is for the material

1 support count. But I do think it should be  
2 significantly lower when you look at that range of  
3 punishment, and I think that would be appropriate,  
4 Your Honor.

5 THE COURT: Okay, Mr. Whalen, thank you  
6 very much. Is there anything else that you have?

7 MR. WHALEN: No, Your Honor.

8 THE COURT: And I want to make sure,  
9 Mr. Rahim, I'm going to give you another chance. Do  
10 you want to talk -- you're not going to tell me  
11 later your attorney told you you couldn't talk. You  
12 don't want to talk, right?

13 THE DEFENDANT: I don't.

14 THE COURT: Step aside, and Ms. Martin  
15 come on up here.

16 MS. MARTIN: Yes, Your Honor.

17 The government does not believe a variance  
18 or departure of any kind is appropriate in this case  
19 and would request a guideline sentence.

20 I first want to address Mr. Whalen's  
21 argument about the need to avoid the sentencing  
22 disparities. If you look at his chart, I mean,  
23 charts are great, but they don't necessarily tell  
24 the story of these sentences.

25 Many of these sentences were the result of

1 guilty plea negotiations and guilty pleas. For  
2 example, on the first page, the 20-year sentence for  
3 Ciccolo was a guilty plea; the Amer Sinan Alaggagi,  
4 guilty plea; Adam Raishani, guilty plea; Zakaryia  
5 Abdin, guilty plea; Ikaika Erik Kang, the gentleman  
6 in Hawaii was 11(c)(1)(C), guilty plea; and Asher  
7 Abida Khan pled guilty. And Judge Hughes in Houston  
8 sentenced him, and that's on appeal by the  
9 government at this point. So I don't know that that  
10 is one to consider.

11 Ones that didn't make Mr. Whalen's list,  
12 and understandably, were U.S. v. Medina in the  
13 Southern District of Florida. And I don't have the  
14 case number, Your Honor, but --

15 THE COURT: How much did he get?

16 MS. MARTIN: He got 30 years. It was  
17 actually a weapons of mass destruction charge that  
18 he pled to, and that was a guilty plea.

19 THE COURT: How much is that in months, 30  
20 years?

21 MS. MARTIN: 360 months, Your Honor.

22 THE COURT: Okay.

23 MS. MARTIN: Guilty plea on that one.

24 Christopher Lee Cornell, that was a 2339B case and  
25 guilty plea, 30 years.

1           And then in the Fort Worth Division of the  
2 Northern District of Texas in September, Michael  
3 Sewell, an 18-year-old, pled guilty to one count of  
4 2339B prior to any complex discovery litigation,  
5 which as the Court well knows, that's a big  
6 incentive for plea negotiations. He pled guilty to  
7 one count, sentenced to 20 years.

8           And those are guilty pleas. As is  
9 Mr. Rahim's right, he went to trial. But inherent  
10 in that is the refusal to accept responsibility and  
11 put the government to its burden, and we accepted it  
12 and we met our burden. But he doesn't get credit  
13 for that now and get some kind of variance or  
14 departure when the examples given largely were the  
15 results of plea negotiations with the government.  
16 And we also don't have any information on whether  
17 those involved downward departure motions or  
18 anything of that sort.

19           And the facts in this case, the government  
20 does not believe, warrant any kind of variance. The  
21 nature and circumstances of the offense and the  
22 history and characteristics of the defendant, I  
23 think the Court will recall that there wasn't a lot  
24 of English in the case, but there was one English  
25 recording. And the tone of the defendant's voice



1 when he said, "ISIS will chop your head off, you  
2 disbeliever. ISIS come into your land, we gonna  
3 occupy your land, we gonna chop your head off, we  
4 gonna kill you, we gonna slaughter you like sheep."  
5 That wasn't directed at U.S. citizens, but it was  
6 directed at people he hated based on his affiliation  
7 with ISIS.

8 And then in Government's Exhibit 122, I  
9 believe the Court will recall that the defendant  
10 said and the translation was: "In any area where  
11 Christians exist, they are legal targets or a Jew or  
12 atheist or crusader or where a Christian missionary  
13 preacher is, all those are legal targets of the  
14 Islamic Caliphate State."

15 The nature and circumstances and  
16 characteristics of this defendant don't warrant a  
17 variance. He was laughing about victims of violent  
18 crimes, which included children in those terrorist  
19 attacks. The characteristics of this defendant  
20 don't warrant a variance.

21 He praised the murder of Dallas Police  
22 officers on that chat room.

23 THE COURT: Yeah, yeah.

24 MS. MARTIN: The characteristics of this  
25 defendant do not warrant a variance.

1           And he was an admitted member of more than  
2 just ISIS. He admitted to being a member of other  
3 foreign terrorist organizations previously. This  
4 just doesn't warrant a variance in this defendant.

5           Additionally, the Court considers under  
6 18 U.S.C. Section 3553(a), a sentence that will  
7 reflect the seriousness of the offense to promote  
8 respect for the law and to provide just punishment  
9 for the offense.

10           Mr. Whalen, in trial -- and I certainly  
11 understand his argument, but I think the evidence is  
12 different. He was traveling. He talked about how  
13 he was compelled to travel and he was a hypocrite if  
14 he didn't commit jihad, and it wasn't just talk.  
15 Just before he traveled, he had been on that  
16 application nonstop for years, and he went dark. He  
17 was off the application, he was -- he had been  
18 driving erratically. He was kind of a bad driver  
19 and surveillance caught him; no more erratic  
20 driving. He was very within the traffic laws right  
21 before he left. He bought a ticket to Jordan in the  
22 Levant that bordered Syria. He shaved his beard and  
23 went to the airport; he had \$6,000 in cash; he wiped  
24 his phones of all social media; he had three foreign  
25 SIM cards, one of which was password-protected and

1 secreted in a jewelry box in his luggage, and he  
2 took his birth certificate. And then he lied to  
3 these agents over and over and over about what he  
4 had been doing. If it was just talk, why did he  
5 lie? He was traveling; he was going to join ISIS,  
6 an organization he loved, he recruited for, he  
7 provided material support for.

8 I think in order to afford adequate  
9 deterrence to criminal conduct and to protect the  
10 public from further crimes of this defendant, as are  
11 the factors in 3553(a), a variance is not warranted,  
12 a guideline sentence is warranted.

13 The government believes in this case with  
14 this defendant and what he did and what he was  
15 trying to do and what he said and the way he  
16 recruited passionately for ISIS and instructed  
17 others to kill and commit attacks in their  
18 homelands, we believe a guideline sentence is  
19 appropriate in this case.

20 THE COURT: Thank you, Ms. Martin. I  
21 would like a few minutes.

22 Sarah, would you come back with me? We're  
23 going to take about a five-minute break, ten-minute  
24 break.

25 (Recess taken.)

1 THE COURT: Anything else, Mr. Whalen?

2 MR. WHALEN: No, Your Honor.

3 THE COURT: Anything else from the  
4 government?

5 MS. MARTIN: Your Honor, just one thing  
6 with respect --

7 THE COURT: Step aside, please, and let's  
8 have her come up here.

9 MR. WHALEN: Okay.

10 MS. MARTIN: Your Honor, just one thing.  
11 Mr. Whalen and I visited over the break. With  
12 respect to supervised release, under  
13 18 U.S.C. Section 3583(j), I believe supervised  
14 release in this type of offense can be any term of  
15 years or life. So it can -- it's not limited to the  
16 three years, it can be any term of years. I just  
17 wanted to raise that.

18 THE COURT: Is it minimum three years? I  
19 thought it was minimum like two years or something.

20 MS. MARTIN: I don't -- I apologize, Your  
21 Honor. I think it's not more than three years for  
22 the false statements; is that correct?

23 USPO: I believe so.

24 MS. MARTIN: And then one to three years.

25 THE COURT: Okay. Okay.

1 MS. MARTIN: We just wanted to let the  
2 Court know that we believe it can be any term of  
3 years up to life.

4 THE COURT: Thank you. Come on up.

5 Mr. Rahim, we don't see many cases like  
6 this here. We might do maybe one case a year for  
7 the various courts that have this come up, and --  
8 and, you know, you didn't plead guilty, which I  
9 think does affect you a little bit -- well, more  
10 than a little bit for the sentencing. But, you  
11 know, I think if I'm looking at what you did -- hold  
12 on a second, I want to find it.

13 Okay. You know, there is -- on the one  
14 hand it seems like it's just phone calls -- not  
15 phone calls, but just being on the website, and then  
16 you're going to see your daughter as far as  
17 Mr. Whalen is concerned. But on the other hand,  
18 there's a lot of stuff that hurts you.

19 I mean, just going over some of the things  
20 in the presentence report, you know, you -- you said  
21 on January 18th of 2016: "... to join them, God  
22 willing. Amen O Lord. By God, I have something in  
23 mind, and since I'm going anyway, I will do this  
24 something. May the Lord of two worlds wills. I  
25 have some act in my mind. May God facilitate

1 matters."

2           And then February 11th of 2016, you said:  
3 "... my religion is on trial because I have not  
4 mobilized to jihad yet and the brothers are crying  
5 out. But by the will of God, the Lord of two  
6 worlds, I swear by God that the intention exists ...  
7 the intention exists but there are obstacles. May  
8 Almighty God facilitate it and we will mobilize to  
9 jihad in the Caliphate Islamic State."

10           And then it goes on, and I'm skipping over  
11 a few things.

12           On June the 12th, there was a mass  
13 shooting at the Pulse Nightclub in Orlando, Florida,  
14 which killed 49 people and injured 53. And you  
15 addressed the attack on the Zello channel. Among  
16 other things, you made fun of the Friday prayers  
17 where those that were killed in Orlando would be  
18 eulogized. You were laughing about the attack and  
19 asked listeners to laugh. You called the attacker a  
20 lion, one of ISIS's main symbols. And you thanked  
21 God for the attack and the success of the attack  
22 because God is almighty.

23           Then on July the 12th, you were talking  
24 about the state of things. And you talked about --  
25 there was a July 14th, 2016, attack by a -- an

1 attacker that drove a 19-ton cargo truck in front of  
2 a large crowd of people in France, and it resulted  
3 in the death of 86 people and injured 434. ISIS  
4 publicly claimed responsibility for the attack and  
5 you spoke about the attack on Zello, and you said:  
6 "I know if you are Islam's enemies, this is what  
7 happens, a truck will go over you."

8 And you said: "A grand killing done by a  
9 lion of God against the infidel French."

10 "May the immigrants in France carry a  
11 knife and kill a Frenchman. If you are truthful,  
12 kill the French, kill them, for God said Jews and  
13 Christians will not like you until you follow their  
14 faith," and it goes on.

15 And then 35 you said: "Many mobilize to  
16 jihad because of a word on this channel." That  
17 meant that you took credit for a lot of what  
18 happened by mobilizing to jihad because of the word  
19 on this channel.

20 And then you talked about the killing of  
21 non-Muslims in England was permissible, and you said  
22 something like this: "Okay. May God bless you. I  
23 was going to grab the microphone so I would tell  
24 him, the one in Manchester, okay, and do not consult  
25 anyone or seek the opinion of others. Kill them and

1 do not show them mercy or compassion, for neither  
2 the civilian clothes protect them nor the military  
3 uniform sanctions the shedding of their blood," and  
4 it goes on.

5 And then in 37, you praise the mission,  
6 and that was after the December 31 attack on the  
7 nightclub in Istanbul where 39 people were killed  
8 and people were of 14 countries. And you gave --  
9 ISIS claimed responsibility for the attack, and you  
10 spoke on the Zello channel referring to the Turkish  
11 nightclub bombing as a continuation of ISIS work.  
12 You praised the mission and said that the way the  
13 Caliphate celebrates is by exploding their pure  
14 bodies, the suicide bombers, in your victim's filthy  
15 pernicious bodies." It goes on and on.

16 There's so much hate out there, so much  
17 hate, and laughter at incredible harm. I mean 45  
18 people, 80 people getting murdered, and you thought  
19 it was funny. And I don't think that's just talking  
20 on a radio station. I think that it's a lot more  
21 than that.

22 And because -- I mean, I don't know if it  
23 was true or not, but December the 16th of -- I don't  
24 know what year it was -- I think it was -- I can't  
25 remember -- you mentioned the killing of people in



1 nightclubs. And then December 31st, there was an  
2 attack at a nightclub in I think it was Istanbul.  
3 And I don't think you took credit for it, I don't  
4 know what you did. But it's -- it's curious,  
5 anyway.

6 So all of these facts, this hate, this  
7 mobilization towards the Islamic State, we just  
8 can't tolerate that in this country. This country  
9 has to stand up firm against terrorism and all of  
10 its factors. And you didn't plead guilty. You went  
11 to trial as you are allowed to. But you made the  
12 government go to their proof, and they put on a  
13 great case and your attorney did a great job for  
14 you, but the government had a very good case. But  
15 we had all sorts of things that went into this case,  
16 all sorts of things that the government had to do,  
17 but they did it, and the end result was that you  
18 were convicted.

19 So I think, Mr. Rahim, the appropriate  
20 sentence in this case is -- is going to be 360  
21 months, that's probably not as much as the  
22 government wanted, but it's not as little as your  
23 attorney wanted. It is 30 years, and I think it  
24 will go as follows: Pursuant to the Sentencing  
25 Reform Act of 1984, it is the judgment of the Court

1 that the defendant, Said Azzam Mohamad Rahim, is  
2 committed to the Bureau of Prisons for a period of  
3 360 months. This sentence consists of 240 months on  
4 Count 1 and 240 months on Count 2. The sentence  
5 imposed on Count 2 shall run consecutively to those  
6 on Count 1, but only to the extent that it produces  
7 a combined sentence equal to the 360-month term.

8 A sentence of 96 months per count is  
9 imposed on each of Counts 3, 4, 5, 6, 7 and 8. The  
10 sentences on each of Counts 3, 4, 5, 6, 7 and 8  
11 shall run concurrently with each other and to Counts  
12 1 and 2, to produce an aggregate sentence of 360  
13 months or 30 years. There is no restitution  
14 applicable in the case, and I did not order a fine,  
15 because I don't think you have the financial  
16 resources to pay it.

17 You have a 100-dollar mandatory special  
18 assessment on each count for a total of \$800. You  
19 must pay \$800. And I think you shall be placed on  
20 supervised release for a period of two years, and  
21 that's going to be 30 years from now.

22 How old are you now?

23 THE DEFENDANT: I will be like 80 if I  
24 make it. I'm 43 now.

25 THE COURT: So it will be a long time; so

1 a two-year term of supervised release. During that  
2 time, you cannot commit another federal, state or  
3 local crime. You must not unlawfully possess a  
4 controlled substance. You must cooperate in the  
5 collection of DNA as directed by probation.

6 There will be no mandatory drug testing  
7 condition based on the Court's determination that  
8 you pose a low risk of future substance abuse.

9 The defendant shall participate and comply  
10 with the requirements of the Computer Internet  
11 Monitoring program, contributing to the costs of  
12 monitoring in an amount not to exceed \$40 per month.

13 The defendant shall consent to the  
14 probation officer conducting the ongoing monitoring  
15 of his computers. The monitoring may include  
16 conducting ongoing monitor of computer equipment.  
17 So the government -- so the monitoring may include  
18 the installation of hardware and software systems  
19 that allow the evaluation of computer use.

20 The defendant shall not remove, tamper,  
21 reverse engineer, or circumvent the software in any  
22 way.

23 The defendant shall only use authorized  
24 computer systems that are compatible on the software  
25 and/or hardware used on the computer and the

1 internet monitoring program.

2 The defendant shall permit the probation  
3 officer to conduct a preliminary computer search  
4 prior to the installation of software. At the  
5 discretion of probation, the monitoring software may  
6 be disabled or removed at any time during the term  
7 of supervision.

8 The defendant shall submit to periodic  
9 unannounced examinations of his computer and  
10 computer program storage media and/or other  
11 electronic or internet capable devices performed by  
12 a probation officer at reasonable times and in a  
13 reasonable manner or on reasonable suspicion of  
14 contraband evidence or of a violation of  
15 supervision. This may include retrieval and copying  
16 of any prohibited data and the removal of such  
17 system for the purposes of conducting a more  
18 thorough inspection. The defendant shall provide  
19 written authorization for the release of information  
20 and from the defendant's internet service provider.

21 The defendant shall not use any computer  
22 other than the one defendant is authorized to use  
23 without prior approval by probation.

24 The defendant shall not use any software  
25 program or device designed to hide, alter, delete

1 records or logs of the defendant's computer in  
2 activities or files shared on the defendant's  
3 computer.

4 The defendant shall not install new  
5 hardware, perform upgrades or effect repairs on the  
6 computer system without prior permission of  
7 probation.

8 The defendant shall not access any service  
9 or use any software that allows a direct  
10 peer-to-peer contact which may include chat rooms,  
11 file sharing or other similar activity without  
12 permission from probation.

13 The defendant shall not access any  
14 internet service provider account or provide -- or  
15 other online service using someone else's account,  
16 name or designation.

17 Mr. Rahim, you can appeal this sentence,  
18 I'm sure you will; I'm just going to assume you will  
19 right now. If you want to appeal, you have two  
20 weeks from the date of my judgment. My judgment may  
21 be tomorrow, it may be next week, but you have two  
22 weeks thereafter to file a notice of appeal.

23 Mr. Whalen can do that for you. Mr. Whalen will do  
24 that for you. If he will check with you and,  
25 Mr. Whalen, will you check with him and see if he

1 wants to appeal and file the notice?

2 MR. WHALEN: We will file the notice, Your  
3 Honor.

4 THE COURT: Okay. All right. Is there  
5 anything else that you want?

6 MR. WHALEN: No, Your Honor. We would  
7 recommend a facility in the Dallas/Fort Worth area.  
8 We know that's up to the Bureau of Prisons.

9 THE COURT: I will recommend that. I  
10 don't know if it will be in this case, but yes.

11 MR. WHALEN: And finally, Your Honor, just  
12 for the record, we would object to the sentence  
13 imposed both procedurally and substantively as being  
14 unreasonable as to both prongs.

15 THE COURT: Okay. Overruled.

16 Ms. Martin, anything from you?

17 MS. MARTIN: Your Honor, there was a  
18 superseding indictment and an original indictment.  
19 We would just ask that those be dismissed now that  
20 he's been convicted and sentenced to the second  
21 superseding indictment.

22 THE COURT: Okay. He's on the second  
23 superseding indictment, the first indictment and the  
24 first superseding indictment are dismissed. Okay.

25 Anything else?

1 MR. WHALEN: No, Your Honor.

2 MS. MARTIN: No, Your Honor.

3 THE COURT: Okay. Mr. Rahim, is remanded  
4 to federal custody, and we're in recess. Thank you.

5 (Court in recess at 4:21 p.m.)  
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C E R T I F I C A T E

I, Shawnie Archuleta, CCR/CRR, certify  
that the foregoing is a transcript from the record  
of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees  
format comply with those prescribed by the Court and  
the Judicial Conference of the United States.

This 21st day of March 2020.

s/Shawnie Archuleta  
Shawnie Archuleta CCR No. 7533  
Official Court Reporter  
The Northern District of Texas  
Dallas Division

My CSR license expires: December 31, 2020

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